

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SALISBURY,

Plaintiff,

v.

DETECTIVE MICHAEL WARD, et al.,

Defendants.

No. C-06-2993 MMC

**ORDER GRANTING DEFENDANT
SANDRI'S MOTION TO DISMISS;
VACATING HEARING**

(Docket No. 10)

Before the Court is the motion filed July 3, 2006 by defendant Lance Sandri ("Sandri") to dismiss the claims asserted against him. Plaintiff has filed an "opposition" to the motion, in which he does not address the merits of Sandri's arguments for dismissal but, rather, seeks leave to amend his complaint to drop the state law claims asserted against Sandri and to clarify the basis of his federal claim. Sandri has not filed a reply. Having considered the papers filed in support of and in opposition to the motion, the Court finds the matter appropriate for resolution without oral argument, see Civil L.R. 7-1(b), and hereby VACATES the September 8, 2006 hearing.

As plaintiff does not oppose Sandri's motion to dismiss on the merits, and Sandri has not opposed plaintiffs' request for leave to amend, the motion to dismiss is hereby GRANTED and the claims asserted against Sandri are hereby DISMISSED with leave to amend.

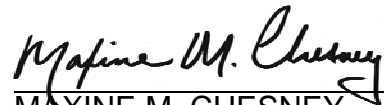
1 The proposed amended complaint submitted with plaintiff's "opposition" does not
2 simply amend the causes of action asserted against Sandri, however, but, rather, contains
3 amendments to the allegations and causes of action with respect to all current defendants,
4 including the addition of a new defendant. As defendants Samantha Speelman
5 ("Speelman") and Michael Dougherty ("Dougherty") have not answered the complaint,
6 plaintiff may amend his allegations against those defendants as a matter of right. See Fed.
7 R. Civ. P. 15(a). Because defendants Michael Ward ("Ward") and the Union City Police
8 Department have answered the complaint, plaintiff may not amend his allegations against
9 those defendants without first obtaining leave of court or a stipulation of the parties. See id.

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11 Plaintiff, in the joint case management statement filed September 1, 2006, states he
12 intends to file a motion to amend on September 5, 2006. To ensure that all of plaintiff's
13 proposed amendments are contained in a single amended complaint, the Court will not
14 require plaintiff to amend his claims against Sandri until a date after the Court is likely to
15 rule on the upcoming motion to amend.

16 Accordingly, no later than October 27, 2006, plaintiff may file an amended complaint
17 containing amendments to his claims against Sandri, Speelman and Dougherty only.
18 Pursuant to Rule 15(a), plaintiff may not amend his claims against Ward and the Union City
19 Police Department, including adding any new defendants, without first obtaining leave of
20 court or a stipulation of the parties.

21 **IT IS SO ORDERED.**

22 Dated: September 5, 2006

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24 MAXINE M. CHESNEY
25 United States District Judge
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